

DOCKET Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of:)
Federal-State Joint Board on)
Universal Service)
Schools and Libraries Support Mechanism)

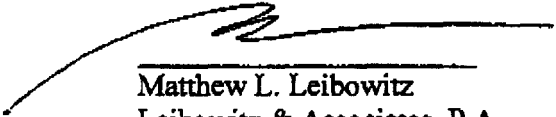
CC Docket No: 02-6

To: The Commission

Revised Certificate of Service

It has come to the attention of the School Board of Miami-Dade County that our Motion to Compel Service by Sprint-Florida, Inc. was not properly served pursuant to FCC Rule 1.47. Accordingly, this pleading has been revised and is being reserved on all interested parties. While served electronically, it was not served in the form of a paper copy and as such, it is being hand served with the Secretary of the Commission today.

Respectfully Submitted,


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January 21, 2005

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To: The Commission

Miami-Dade County Public Schools' Motion to Compel Service by Sprint-Florida, Inc.

1. Miami-Dade County Public Schools ("MDCPS") respectfully requests the Federal Communications Commission ("FCC") to issue an Order compelling Sprint-Florida, Inc. ("Sprint") to comply with FCC Rule §54.721(d) and provide copies of all pleadings, correspondence, documents, etc., that Sprint has provided and may provide in the future to the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") with respect to MDCPS's non-compliance with Schools and Libraries Support Mechanism Rules ("SLSM").^{1, 2}

History of Proceeding

¹ MDCPS reserves its rights to include violations of § 54.721(b) in its appeal of the USAC December 6, 2004 letter.

² Recognizing the expeditious treatment by the Commission on Freedom of Information Act ("FOIA") requests and the minimum time remaining prior to filing MDCPS' appeal to the USAC December 6, 2004 letter, MDCPS filed an FOIA request, at USAC's suggestion, with the FCC on January 13, 2005 with respect to these documents. However, the grant of the FOIA will not result in future compliance with the Commission's service requirements, and thus, MDCPS believes the instant Motion is also appropriate.

2. In December 2002 - January, 2003, the Internal Audit Division of USAC performed an audit of MDCPS's SLSM for Funding Year 1999. The Audit Division reported its findings to Mr. George McDonald, Vice President of Schools and Libraries Division on January 17, 2003. While the audit found MDCPS in compliance with many aspects of the SLSM, the audit also found that certain components that were to be included within Private Branch Exchange (PBX) systems ordered by MDCPS were not found in their physical inventory of sampled schools. Based on the documentation received and the physical inventories performed at the schools sampled, the Audit Division estimated the total amount funded by SLD for the equipment that could not be located to be Thirty Three Thousand Two Hundred Nine Dollars and 10/100 (\$33,209.10). In addition, USAC sought recovery in the amount of Three Hundred Ninety Eight Thousand Five Hundred Sixty-Seven Dollars and 80/100 (\$398,567.80), based on extrapolated audit findings made by USAC of analog station modules and analog terminal adapters at the remaining 135 schools that were not inventoried. Accordingly, a Recovery of Erroneously Disbursed Funds Letter was sent to Sprint on June 30, 2003, requesting the return of over Four Hundred Thousand Dollars (\$400,000.00).

3. On August 28, 2003, Sprint filed an Appeal of USAC's June 30, 2003 Request for Recovery of Erroneously Disbursed Funds ("Sprint Appeal"). Sprint failed to serve MDCPS with a copy of their Appeal. MDCPS also filed a Appeal of the June 30, 2003 Request on August 28, 2003.³ Subsequently, on January 26, 2004 Sprint filed a Supplemental Response to Notice of Appeal ("Supplement"). Sprint, in its Supplement, made numerous allegations of prohibitive misconduct by MDCPS. Again, Sprint failed to serve MDCPS with a copy of its Supplement.

³ MDCPS asserted that based on an actual inventory the correct amount of overfunding was not Four Hundred Thousand Eight Hundred Eighty-Eight Dollars and 30/100 (\$424,888.30), but One Hundred Sixty Thousand and Nine Hundred Ninety-Nine Dollars and 20/100 (\$160,994.20). MDCPS' appeal did not allege any prohibitive conduct by Sprint in its appeal.

4. On December 6, 2004, MDCPS received a letter from USAC ("Suspension Letter") suspending action on all pending or future FCC Forms 471 submitted by MDCPS until USAC determines that MDCPS has reasonably complied with certain requests contained in its Suspension Letter. Attached to the letter was a redacted copy of Sprint's Supplement. This was the first time MDCPS received a copy of the Supplement. The Suspension Letter was the direct result of issues raised by the Sprint Appeal, and the Supplement.

5. On December 16, 2004, counsel for MDCPS requested Sprint to provide MDCPS with copies of its Appeal, Supplement and attachments thereto. Unfortunately, Sprint has not yet responded.

6. On December 17, 2004, counsel for MDCPS sent a letter to USAC requesting USAC provide MDCPS un-redacted copies of Sprint's documents and attachments. A copy of this letter is attached hereto as Exhibit A. Counsel for USAC has orally informed counsel for MDCPS that USAC will not provide MDCPS the necessary Sprint documents, nor will it require Sprint to provide the documents to MDCPS.

Argument

7. Section 54.721(d) of the Commission's Rules provides, in relevant part, that "if a request for a review filed pursuant to § 54.720(a) through (c) alleges prohibitive conduct on the part of a third party, such request shall be served on the third party consistent with the requirements of service of documents set forth in § 1.47 of this chapter...." Sprint's Appeal, and its Supplement were filed Pursuant to § 54.720(b).

8. In its January 26, 2004 Supplement, Sprint repeatedly accuses MDCPS of prohibitive conduct. Sprint's statements include allegations of misstatements on FCC Form 471 applications

made by MDCPS.⁴ Sprint allegedly "identified a number of discrepancies between the Item 21 attachment submitted by Miami-Dade and Sprint's documentation for these transactions."⁵ Sprint alleged that Miami-Dade overstated the cost amounts for certain systems while Sprint's bid documents showed lower prices for these items.⁶ Sprint made allegations that MDCPS failed to include original equipment manufacturer discounts that were passed along to MDCPS by Sprint.⁷ Sprint made allegations that MDCPS' FCC Form 471 failed to incorporate trade-in credits in calculating total equipment prices.⁸ Sprint even went so far as to allege that MDCPS asked Sprint to apply credits from E-rate eligible purchases toward the purchase of E-rate ineligible equipment.⁹

9. It is also clear that USAC considered these allegations related to prohibitive conduct. In the Suspension Letter, USAC concludes that "The audit finding(s) and other issues identified by Sprint indicate that MDCPS failed to comply with one or more of the certifications that were made on program forms and/or that MDCPS has otherwise failed to comply with program requirements."¹⁰ Emphasis added. Based upon USAC's conclusion in its Suspension Letter, there can be no doubt that Sprint's pleadings included allegations of "prohibitive conduct" by MDCPS.

10. Therefore, pursuant to § 54.721(d) of the Commission's Rules, Sprint was required

⁴ See Supplement at 2.

⁵ *Id.* at 6.

⁶ *Id.* at 8.

⁷ *Id.* at 8-9.

⁸ *Id.* at 9.


⁹ *Id.*

¹⁰ See Suspension Letter at 2.

to serve MDCPS with its Appeal and its Supplement. Sprint violated the Commission's Rule by failing to do so.

11. Accordingly, we respectfully request an Order Compelling Sprint to provide full, complete and unredacted copies of its August 28, 2003 Appeal, its January 26, 2004 Supplemental Response to Notice of Appeal to MDCPS, and any documents related thereto, as well as serving MDCPS with any future documents related thereto.¹¹

Respectfully Submitted,



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January 18, 2005

¹¹ Apparently, at some unknown date, Sprint had made *ex parte* requests to USAC to keep this information confidential and limit distribution due to claimed "highly sensitive business information" contained therein. Notwithstanding that Sprint failed to file any request pursuant to §0.459 of the Commission's Rules and serve MDCPS with its request, USAC improperly accepted Sprint's uncontested assertions, redacted the Supplement provided to MDCPS and strongly urged MDCPS to keep the document confidential. MDCPS strongly believes that both USAC and Sprint violated the Commission's rules by redacting sections and withholding the documents from MDCPS and as a result denied MDCPS its rights to respond to any confidentiality request, and, alternatively to defend itself against allegations of prohibitive conduct prior to USAC's issuance of its Suspension Letter. However, given the necessity to timely appeal the Suspension Letter to demonstrate MDCPS' compliance with the SLSM and to seek reinstatement of millions of dollars of pending and future funding requests, MDCPS would agree to receive these documents under a Protection Order, so long as the documents are available to MDCPS and its representatives in order to defend itself against these stealth allegations.